

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

\_\_\_\_\_  
In the Matter of )  
 )  
Petition for Declaratory Ruling Concerning )  
The Bundling of Local Telephone Service )  
with Long Distance Service )  
\_\_\_\_\_ )

CG Docket No. 03-84

**COMMENTS OF CBeyond COMMUNICATIONS, LLC  
PAC-WEST TELECOMM, INC. AND US LEC CORP.**

Julia O. Strow  
Vice President - Regulatory & Industry Relations  
Cbeyond Communications, LLC  
320 Interstate North Parkway, SE, Suite 300  
Atlanta, Georgia 30339

Patrick J. Donovan  
Michael P. Donahue  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007  
(202) 424-7500 (Telephone)  
(202) 424-7643 (Facsimile)

John Sumpter  
Vice President, Regulatory  
Pac-West Telecomm, Inc.  
4210 Coronado Avenue  
Stockton, California 95204

Counsel for Cbeyond Communications,  
LLC, Pac-West Telecomm, Inc.,  
and US LEC Corp.

Wanda G. Montano  
Vice President, Regulatory &  
Industry Affairs  
US LEC Corp.  
6801 Morrison Boulevard  
Charlotte, North Carolina 28211

Dated: June 5, 2003

## TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
I. INTRODUCTION AND SUMMMARY.....	1
II. COMMENTS.....	3
A. There is No Appreciable Demand for “Local-Only” Service.....	3
B. The Communications Act and the Commission’s Rules Require Local Exchange Carriers to Provide Access to Interexchange Services and Carriers .....	5
C. The Commission’s Findings in the <i>CPE Bundling Order</i> Demonstrate that LECs Are Not Required To Provide Local-Only Service .....	7
III. CONCLUSION.....	9

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petition for Declaratory Ruling Concerning	)	CG Docket No. 03-84
The Bundling of Local Telephone Service	)	
with Long Distance Service	)	
	)	

**COMMENTS OF CBeyond COMMUNICATIONS, LLC  
PAC-WEST TELECOMM, INC. AND US LEC CORP.**

Cbeyond Communications, LLC (“Cbeyond”), Pac-West Telecomm, Inc. (“Pac-West”), and US LEC Corp. (“US LEC”) (together, the “Commenters”), through undersigned counsel and in accordance with the Federal Communications Commission’s (“Commission”) public notice, hereby submit their Comments in the above-captioned proceeding. Petitioner seeks a declaratory ruling that local exchange carriers (“LECs”) are required to offer a “local only” line to subscribers that do not want or will not use long distance on a telephone line. Petitioner, Linda Thorpe, is a consumer who purchased a second telephone line from GTE for an answering machine and later for dial up Internet access. For the reasons set forth herein, the Commission should deny the petition.

**I. INTRODUCTION AND SUMMARY**

Cbeyond is a competitive provider of wireline telecommunications services to small business customers in Colorado, Georgia, and Texas. Cbeyond provides a bundled package of local, long distance voice and data telecommunications services. Cbeyond provides its services over a “next generation” Internet Protocol (“IP”) network. Cbeyond’s network permits it to provide large customer solutions to small business customer at an affordable price.

Pac-West is a provider of wholesale and retail integrated communications services in the western United States. Pac-West customers include Internet service providers, small and medium-sized businesses, and enhanced communications service providers, many of which are communications-intensive users. Pac-West's service offerings enable these companies to provide their business and residential customers with access to Internet, paging and other data and voice services from almost any point in a state through a local call.

US LEC is a switch-based, wireline competitive local exchange carrier ("CLEC") that provides local, long distance and data services to large and mid-sized business customers in the mid-Atlantic and southeastern regions of the United States.

On August 2, 2002, Petitioner filed a Petition for Declaratory Ruling seeking, among other relief, a ruling that LECs are not permitted to automatically combine long distance service with a local service line when the customer does not request it and the customer will not use long distance service on that line. Petitioner argues that requiring a customer to purchase long distance service that it neither ordered nor needs when the customer purchases local exchange service violates the Communications Act. The Commenters urge the Commission to deny Petitioner's request and explicitly state that LECs are not required to provide unbundled local exchange and interexchange service or a "local service only" line.

Petitioner has not demonstrated that there is a specific consumer need for local-only service or that a significant number of customers would actually utilize such service. Nor has Petitioner identified any specific requirement that prescribes the provision of "local service only" telephone lines by LECs. Indeed, the Commission's rules, and the statutes under which those rules were implemented, require exactly the opposite – that LECs make available to all of their customers the ability to access any interexchange carrier ("IXC") or service. Moreover, while

Petitioner claims that the line in question would only be used for local calls, the Commission has determined that such traffic places a burden on both the local exchange and interexchange network in the same manner as if the customer had placed a long distance call from the same line. LECs should be permitted to recover a minimal amount from the customer in order to recoup some of the costs of providing this service.

## **II. COMMENTS**

### **A. There is No Appreciable Demand for “Local-Only” Service**

Petitioner suggests that there are “countless customers” that utilize local only service and are nonetheless required to pay a minimum monthly charge for long distance service that they do not want or need.<sup>1</sup> However, the Commenters have not experienced a significant demand for local-only service from existing or prospective customers, nor are they aware of other carriers having received “countless” such requests. In fact, given the competitive nature of the telecommunications market, it is likely that if there were in fact a significant demand for local-only service, many LECs would be offering such service. CLECs in particular, as new market entrants, would respond to any significant demand for local-only service as an alternative way to enter a particular market, establish recognition or seek a niche market position.<sup>2</sup> The fact that CLECs generally have not elected to pursue this option significantly undermines any claim by Petitioner that consumers are clamoring for local-only service.

Further, establishing local-only lines could increase the cost and lower the efficiency of providing service as LECs would have to modify their services and equipment to account for

---

<sup>1</sup> Petition at p. 15.

<sup>2</sup> See In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended; 1998 Biennial Review – Review of Customer Premises Equipment And Enhanced Services Unbundling Rules In the Interexchange Access and Local Exchange Markets, *Report and Order*, CC Docket Nos. 96-61 and 98-183, FCC 01-98, at ¶ 26 (rel. March 30, 2001) (“In a competitive market, carriers have an incentive to offer bundles or stand-alone offerings that a customer needs or the customer will switch to another carrier”) (“*CPE Bundling Order*”).

such limited service and, if necessary, perform additional modifications to reestablish interexchange service in the event the customer elects to change its service, or the customer changes. Indeed, the Commission noted in its *CPE Bundling Order*, “that consumer benefit from bundling because it eliminates the need for carriers to separately provision, market, and bill services, and therefore reduces the transaction costs carriers pass on to consumers.”<sup>3</sup>

Moreover, to the extent a customer wishes to block access to long distance services or IXC’s on a particular line, the customer can select a toll blocking or other service from the LEC that prevents the origination of interexchange toll calls from that line. In this manner, customers can limit the use of their line to local-only calls and thereby reduce the occurrence of unwanted interchange traffic. This feature has likely eliminated the need for a local-only service for many consumers.

Finally, many consumers that have installed second lines for fax machines, modems, or other uses may also want the ability to place interexchange calls from those lines. For example, a facsimile machine would most likely need to be able to originate interexchange calls to transmit data outside of the local calling area. In addition, customers may also want to have access to an interexchange carrier in the event they need to make a long distance call on their secondary line (*e.g.*, the primary line is busy, out of service, etc.).

In the absence of any significant demand for local-only service, it is not reasonable to require LECs to provide the service, particularly in light of the potential for increased costs, decreased efficiency and likely low demand for the service. As noted, other options, such as toll blocking, exist that can provide customers the same functionality.

---

<sup>3</sup> *CPE Bundling Order* at ¶ 15.

**B. The Communications Act and the Commission's Rules Require Local Exchange Carriers to Provide Access to Interexchange Services and Carriers**

Consistent with the requirements of Sections 251(a) and (g) of the Communications Act of 1934 (the "Act"),<sup>4</sup> LECs provide their customers the *ability* to reach any other provider of exchange service or interexchange service without having to dial an access code or additional telephone numbers, regardless of whether or not the customer anticipates actually utilizing such access. Thus, regardless of whether or not a customer actually accesses an IXC or places interexchange toll calls, the LEC providing the underlying local exchange service must maintain the appropriate interconnections and have in place appropriate switching, signaling and other functionality to enable the proper routing of interexchange toll calls. It would be inefficient and impractical for a LEC to deploy its network without this functionality and add it only when a customer indicated that they wished to place long distance calls. Therefore, even those customers that do not intend to utilize interexchange services or carriers place a burden on the LEC's network and cause the LEC to incur costs to maintain appropriate interconnections and other functionality in the event a customer originates an interexchange call.

This requirement is also reflected in the Commission's access charge regime. In its *Access Charge Reform First Report and Order*,<sup>5</sup> the Commission revised its existing access charge requirements in order to put into place rules to further implementation of the universal service support mechanism mandates of the Telecommunications Act of 1996 ("1996 Act").<sup>6</sup> Among other things, the Commission outlined the methodology and rationale for the charges for interstate access that LECs may assess customers. The Commission noted that "[m]uch of the

---

<sup>4</sup> 47 U.S.C. §§ 251(a) and (g).

<sup>5</sup> In the Matter of Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; End User Common Line Charge, *First Report and Order*, CC Docket Nos. 96-262, 94-1, 91-213 and 95-72), 12 FCC Rcd 15982 (1997) ("*Access Charge Reform First Report and Order*").

<sup>6</sup> 47 U.S.C. § 254.

telephone plant that is used to provide local telephone service (such as the local loop, the line that connects a subscriber's telephone to the telephone company's switches) is also needed to originate and terminate long-distance calls.”<sup>7</sup> Therefore, the Commission held that LECs may recover the costs of providing interstate access over the local loop through several different access charges, including the Subscriber Line Charge (“SLC”), Common Carrier Line Charge (“CCL”) and Primary Interexchange Carrier Charge (“PICC”),<sup>8</sup> the charges about which Petitioner complains.<sup>9</sup>

The United States Court of Appeals for the Eighth Circuit upheld the Commission's rate methodology in *Southwestern Bell Tel. Co. v. FCC*.<sup>10</sup> In addressing the same issue raised by Petitioner here – whether a customer that would like “local only service” is required to pay for access to the interexchange network – the Court stated:

a subscriber who does not use the subscriber line to place or receive [interstate] calls imposes the same NTS costs as a subscriber who does not use the line. . . . Thus, simply by requesting telephone service, the subscriber “causes” local loop costs, whether it uses the service for intrastate or interstate calls.<sup>11</sup>

The Court then concluded that “it is therefore appropriate and rational for the Commission to impose those costs on the end user.”<sup>12</sup> On this basis alone, the Commission should deny the petition.

---

<sup>7</sup> *Access Charge Reform First Report and Order*, at ¶ 17.

<sup>8</sup> *Access Reform First Report and Order*, at ¶¶ 36-41.

<sup>9</sup> *See* Petition, Exhibit A, ¶¶ 12-16.

<sup>10</sup> 153 F.3d 523 (8<sup>th</sup> Cir. 1998).

<sup>11</sup> 153 F.3d at 558 (quoting *National Ass'n of Regulatory Util. Comm'rs*, 737 F.2d 1095, 1108 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1227 (1985)).

<sup>12</sup> *Id.*

**C. The Commission's Findings in the *CPE Bundling Order* Demonstrate that LECs Are Not Required To Provide Local-Only Service**

In the *CPE Bundling Order*, the Commission removed its previous restriction on the bundling of local exchange and interexchange services with customer premise equipment (“CPE”), finding that the benefits of bundling packages of services outweighed any possible anticompetitive effects of bundling service with CPE. The Commission previously determined that the bundling of telecommunications services with CPE could force customers to purchase unwanted CPE in order to obtain necessary telecommunications services, thus restricting customer choice and retarding the development of a competitive CPE market.<sup>13</sup> This prior restriction on the bundling of telecommunications services and CPE was the only such restriction on the bundling of services applicable to LECs and IXC<sup>14</sup> and, as noted in the *CPE Bundling Order*, the Commission has determined that reasons initially requiring such a restriction are no longer applicable. Accordingly, contrary to Petitioner’s claims, there are no restrictions on a LEC’s bundling of telecommunications services. Rather, the Commission has determined that “consumer benefit from bundling because it eliminates the need for carriers to separately provision, market, and bill services, and therefore reduces the transaction costs that carriers pass on to consumers.”<sup>15</sup>

With the Commission’s lifting of its restrictions on the bundling of telecommunications services and CPE, LECs are no longer subject to unbundling requirements such as those proposed by Petitioners here. In addition, the reason for which the Commission originally

---

<sup>13</sup> *Id.*, at ¶ 5.

<sup>14</sup> Certain other competitive safeguards imposed on dominant carriers in the Commission’s *Computer Inquiry Proceeding* remain in effect; however, those safeguards are not applicable to the Commission’s analysis in this docket. In addition, the Commission retained its requirement that incumbent LECs offer exchange access service and any other service for which the Commission determines them to be dominant separately on a nondiscriminatory basis to the extent they bundle such service(s) with CPE. *CPE Bundling Order*, at ¶ 37.

<sup>15</sup> *CPE Bundling Order*, at ¶ 15.

imposed unbundling requirements on CPE – the likelihood that carriers could force customers to purchase unwanted CPE in order to obtain monopoly telecommunications services – is not present in the competitive market for local exchange and interexchange services. As the Commission noted in the *CPE Bundling Order*, in a competitive market, carriers have an incentive to offer their customers bundled packages or stand-alone options in order to meet the customer’s needs or the customer will switch to another carrier.<sup>16</sup> Petitioner has not demonstrated that there is a need for the separate offering of local-only service, such as the concerns that warranted the Commission’s restriction on the bundling of telecommunications services and CPE, nor has Petitioner demonstrated that there is sufficient demand for local-only service that carriers are incented to offer such service.

---

<sup>16</sup> *Id.*, at ¶ 26.

### III. CONCLUSION

Petitioner has not demonstrated sufficient reason for the Commission to alter its existing rules or modify the service offerings created in the increasingly competitive local exchange marketplace. Without a significant demand for local-only service, which would on its own provide carriers an incentive to provide such service, and in the absence of the anticompetitive concerns that have warranted bundling restrictions in the past, there is no basis for imposing a requirement that LECs provide local-only service. Accordingly, for the reasons set forth above, Commenters urge the Commission to reject Petitioner's request and issue a Declaratory Ruling finding that LECs are not required to provide local-only service and are permitted to offer bundled packages or stand-alone services as the markets and consumer demands warrant.

Respectfully submitted,

Julia O. Strow  
Vice President - Regulatory & Industry Relations  
Cbeyond Communications, LLC  
320 Interstate North Parkway, SE, Suite 300  
Atlanta, Georgia 30339

John Sumpter  
Vice President, Regulatory  
PacWest Telecom, Inc.  
4210 Coronado Avenue  
Stockton, California 95204

Wanda G. Montano  
Vice President, Regulatory &  
Industry Affairs  
US LEC Corp.  
6801 Morrison Boulevard  
Charlotte, North Carolina 28211

Dated: June 5, 2003



Patrick J. Donovan  
Michael P. Donahue  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007  
(202) 424-7500 (Telephone)  
(202) 424-7643 (Facsimile)

Counsel for Cbeyond Communications,  
LLC, Pac-West Telecomm, Inc.,  
and US LEC Corp.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Comments has been served via first class mail on this 5<sup>th</sup> day of June, 2003 on the following:

James A. Staack, Esq.  
Catherine L. Hudgins, Esq.  
Staack, Simms & Hernandez, P.A.  
900 Drew Street, Suite #1  
Clearwater, FL 33755

Peter Murnagham, Esq.  
Dennis Ferguson, Esq.  
Murnagham & Ferguson  
100 N. Tampa Street, Suite 2600  
Tampa, FL 33601-2937

Michael S. Hooker, Esq.  
Guy McConnell, Esq.  
Glen Rasmussen & Fogerty  
100 South Ashley Drive, Suite 1300  
Tampa, FL 33601

Daniel C. Johnson, Esq.  
Carlton Fields  
P.O. Box 1171  
Orlando, FL 32802-1171

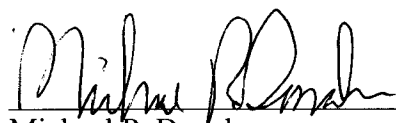
Ronald S. Holliday, Esq.  
Lonnie L. Simpson, Esq.  
Piper Marbury Rudnick & Wolfe, LLP  
101 E. Kennedy Boulevard, Suite 2000  
Tampa, FL 33602-5133

Brant M. Laue, Esq.  
Anne E. Gusewelle, Esq.  
Armstrong Teasdale, LLP  
2345 Grand Boulevard, Suite 2000  
Kansas City, MO 64108

Peter Kontio, Esq.  
Michael P. Kenny, Esq.  
Alston & Bird, LLP  
One Atlantic Center  
1201 W. Peachtree Street  
Atlanta, GA 30309-3424

Howard Spierer, Esq.  
295 North Maple Avenue  
Room 1446L3  
Basking Ridge, NJ 07920

Adam H. Charnes, Esq.  
WorldCom, Inc.  
1133 19<sup>th</sup> Street, N.W.  
Washington, D.C. 20036

  
Michael P. Dorahue